

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

O R D E R

MUNICIPAL BOARD, CHITTORGARH
VERSUS
RAJASTHAN TARGUR & NIRA UDHYOG
AND ANOTHER.

S.B.C.REVISION NO.608/2005
UNDER SECTION 151 C.P.C.

Date of Order :- 6.12.2006

P R E S E N T

HON'BLE MR.JUSTICE PRAKASH TATIA.

Mr.Anil Bhandari, counsel for the petitioner.
Mr.Rajesh Joshi, counsel for the respondents.

BY THE COURT :-

Heard learned counsel for the parties.

The petitioner has challenged the order dated 26th October 2005 passed by the Executing Court in Execution Case No.7/05 on 26th October 2005 the Executing Court allowed the decree-holder's application under order 21 rule 32 CPC and directed the petitioner to reinstall the booth at the place for which the respondent

decree-holder obtained the decree in Civil Original Suit No.91/97 on 25th October 1999.

Brief facts of the case are that plaintiff non-petitioner filed suit for injunction and sought relief against non-petitioner defendant that the non-petitioner defendant should not remove the plaintiff's booth situated on particular location given in the plaint having measurement of 8'x6'. The suit was decreed and petitioner was restrained from removing booth without following due process of law. The non-petitioner submitted in the application under order 21 rule 32 CPC that despite injunction decree, the petitioner has removed non-petitioner's booth on 15th March 2005.

Petitioners submitted reply and took a plea that petitioner has not removed the booth from the place which was disclosed in the plaint by the non-petitioner. It is submitted that the non-petitioner installed another booth at different place and that was removed after service of notice in accordance with law. It is also submitted that

even removal of cabin of the non-petitioner is from the disputed place, even then it was removed after due notice and by compliance of the provisions of law, therefore, the court below committed error of fact as well as error of law in allowing application of non-petitioner filed under order 21 rule 32 CPC.

Learned counsel for the non-petitioner vehemently submitted that earlier Commissioner was appointed during the pendency of the suit and thereafter injunction decree was passed by the trial Court. In the execution proceedings on petition of the non-petitioner under order 21 rule 32 CPC, again Commissioner was appointed. The Commissioner gave report that both which was situated at the place disclosed in the plaint has been removed recently and, therefore, there was sufficient material available before the executing court for reaching to the conclusion that petitioner in violation to injunction decree removed the booth of the non-petitioner from the place disclosed in the plaint. However, it is admitted case of the both the parties that both the parties did not

produce any evidence and the court below relied upon only two commissioners report: one appointed in Civil Original Suit No.91/97 wherein decree was passed, and, another appointed in execution proceedings and on application under order 21 rule 32 CPC.

The petitioner's one of the ground is that the decree holder did not appear in the witness box to prove his case. It is not disputed that executing Court accepted the commissioners report which was part of the original Suit No.91/97 in Execution Case NO.7/05 for execution of the decree dated 25th October 1999 despite the fact that the commissioner report was not proved by evidence. The another commissioner report relied upon was obtained in the proceeding under Order 21 rule 32 CPC. Looking to the totality of the facts of present case, court below should have given opportunity to the parties to lead evidence to find out that booth was removed from the same location for which decree was passed as this is a pure question of fact and could not have been decided merely on the basis of two commissioners report of two different periods.

On on this ground the order of executing court dated 6th October 2005 deserves to be set aside, hence, set aside.

Since it is a case of urgent nature, therefore, the Execution Court shall decide the petition under order 21 Rule 32 CPC expeditiously within a period of two months from the date of receipt of record. Both the parties to cooperate the Court to decide the petition of non-petitioner.

The Revision Petition is allowed, accordingly. The order dated 26th October 2005 is set aside The record alongwith copy of this order be sent forthwith. Both the parties are directed to appear before the Court below on 18th December 2006.

(PRAKASH TATIA)J.

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